

### Remarks

Claims 1, 4-10, 16, 17, 19, 20, 23-26, 31-35 and 39-41 are currently pending. Claims 1, 25, 31, 32, 35, 39 and 40 have been amended. Support for the instant amendments can be found throughout the specification including for example in paragraph [0015]. New claims 71-72 have been added. Claim 71 is identical to claim 25, but directed to "an agent." The new claims find support throughout the specification, in particular, in paragraphs [0009], [0019] and [0029]. No new issues of patentability are raised by the amendments. Claims 36-38, 42-63, 64, 65 and 70 have been cancelled. In addition, previously withdrawn claims 2, 3, 12-15, 18, 21, 22, 27-30 and 66-69 have now been cancelled; however, applicants reserve the right to pursue the restricted subject matter in one or more divisional applications.

The instant amendments were discussed with the Examiner in a personal interview dated July 1, 2008 and follow-up interview dated July 25, 2008 and it was agreed that these amendments overcome the cited prior art references. In addition, subject to a follow-up review, the Examiner agreed the amended claim language was allowable. Applicants urge early and favorable consideration of the instant claims.

### Response To Rejection Under 35 U.S.C. §112

Claims 1,4-10, 16, 17 19, 20, 23, 24, 35-41 and 70 have been rejected under 35 U.S.C. §112, first paragraph for the use of the term "therapeutic". During the interview, it was agreed that the term "therapeutic" was unnecessary for a clear understanding of the claimed subject matter. The term has been deleted from the instant claims, which is believed to render the rejection moot. Reconsideration and withdrawal of this §112 rejection is respectfully requested.

### Response to Rejections Under 35 U.S.C. §103

Claims 1, 6-9, 20 and 70 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Hope et al (US Patent No. 6,139,871). Applicants respectfully disagree with this rejection.

As discussed during the interview, Hope relates to a treatment for atherosclerosis and does not teach or suggest a method of treating a patient having an acute myocardial infarction, as recited in the instant claims. Nothing in the Hope reference teaches or suggests that an agent encapsulated in a carrier from 0.03-1 micron in size can be used to reduce the myocardial zone of infarct in a patient having an acute myocardial infarction. During the interview, the Examiner agreed that the instant amendments distinguish the claims over Hope. Applicants respectfully request reconsideration and withdrawal of this §103 rejection.

Claims 1, 4-10, 16, 17, 19, 20, 23-26, 31-38, 40, 41, 64, 65 and 70 have been rejected under 35 U.S.C. §103(a) over Ylitalo in view of Hope. Applicants respectfully disagree with this rejection.

During the interview, it was discussed and agreed that Ylitalo, like Hope, describes a method of treating atherosclerosis, but does not teach or suggest a method of treating a patient having an acute myocardial infarction. The physical events that occur during an acute myocardial infarction are completely different from those occurring during atherosclerosis and neither Ylitalo nor Hope, alone or in combination, teach or suggest that their methods can be effective in treating a patient undergoing an acute myocardial infarction. During the interviews, it was agreed that the instant amendments distinguish the claims over Ylitalo in view of Hope. Applicants respectfully request reconsideration and withdrawal of this §103 rejection.

Claims 1, 4-10, 16, 17, 19, 20, 23-26, 31-41, 64, 65 and 70 have been rejected under 35 U.S.C. §103(a) over Golomb (USP 6,719,998) in view of Hope. Applicants respectfully disagree with this rejection.

During the interview, it was discussed and agreed that Golomb describes a treatment for restenosis, which is a process that occurs over months after a percutaneous transluminal coronary angioplasty procedure. The characteristics of restenosis is not related to the characteristics of an acute myocardial infarction and

there is no teaching or suggestion in Golomb that their restenosis treatment method can be used for the treatment of an acute myocardial infarction. In other words, there is no teaching or suggestion that the Golomb method can be used in a patient having an acute myocardial infarction. During the interview, the Examiner agreed that neither Golomb nor Hope, alone or in combination teaches or suggests the claimed invention. Therefore, applicants respectfully request reconsideration and withdrawal of this §103 rejection.

Claims 1, 4-10, 16, 17, 18, 20, 23-26, 31-41, 64, 65 and 70 have been rejected under 35 U.S.C. §103(a) as being obvious over Golomb (USP 6,984, 400) in view of Hope. Applicants respectfully disagree with this rejection.

Just as discussed above, neither Golomb nor Hope, alone or in combination, teach or suggest a method of treating a patient having an acute myocardial infarction. Treatments for restenosis or atherosclerosis do not teach or suggest methods for treating a patient undergoing an acute myocardial infarction, as claimed. During the interview, the Examiner agreed that Golomb in view of Hope does not teach or suggest the instant claims. Applicants respectfully request reconsideration and withdrawal of this §103 rejection.

Claims 1, 4-10, 16, 17, 19, 20, 23-26, 31-41, 64, 65 and 70 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting over co-pending application no. 10/871,488. This rejection is believed premature because no patent has yet issued on co-pending application 10/871,488. Reconsideration and withdrawal of this rejection is respectfully requested.

### **CONCLUSION**

Based on the foregoing remarks and amendments, applicants respectfully request reconsideration and withdrawal of the rejections of the pending claims and requests allowance of this application.

In the event the Examiner has any questions or concerns that can be addressed by telephone, applicant respectfully invites the Examiner to contact the undersigned by telephone.

### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 50-4387, Order No. 92110.005US1.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-4387, Order No. 92110.005US1.

Dated: July 28, 2008

Respectfully submitted,  
CADWALADER, WICKERSHAM & TAFT LLP

By: Dorothy R. Auth

Dorothy R. Auth  
Registration No. 36,434

Address:  
CADWALADER, WICKERSHAM & TAFT LLP  
One World Financial Center  
New York, NY 10281  
(212) 504-6000 Telephone  
(212) 504-6666 Facsimile